

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRUSTEES OF THE LABORERS INTERNATIONAL
UNION OF NORTH AMERICA LOCAL 1000
WELFARE, PENSION, ANNUITY, VACATION,
and TRAINING FUNDS, and LABORERS
INTERNATIONAL UNION OF NORTH AMERICA
LOCAL 1000,

**CERTIFICATION OF
STEPHEN E. EHLERS**

07 CIV 10284 (WCC)(GAY)

Plaintiffs,

- against -

INTERCOUNTY PAVING ASSOCIATES, L.L.C,

Defendant.
-----X

STEPHENE E. EHLERS, certifies the following to be true under the penalty of perjury:

1. This certification is made in support of plaintiffs' application, for interest, penalty interest, attorneys fees, costs and disbursements with respect to the above matter.

OVERVIEW OF CASE

2. This is an action by which plaintiffs, Laborers Local 1000 and its affiliated employee fringe benefit funds, sought dues and contributions from defendant for hours worked by employees of the defendant at the laborers trade within the territorial jurisdiction of the Laborers Local 1000.

3. The complaint was filed on November 13, 2007. The case was assigned to Judge Conner. Defendant filed its answer on or about January 28, 2008 through Cole, Schotz, Meisel, Forman & Leonard, P.A.

4. On or about November 30, 2007, the defendant submitted its check to the Fund Office in the amount of \$31,949.46 with remittance reports covering the delinquency

from the period April 2, 2007-July 29, 2007 (copies attached as Exhibit A). The Fund Office was directed by the defendant to hold this check until December 20, 2007 when it was released for deposit.

5. Thereafter I endeavored to come to an agreement with Robert Dowd, Esq., the attorney with Cole, Schotz, Meisel, Forman & Leonard, P.A. who is handling this matter for the defendant, with respect to interest, penalty interest, our attorneys fees and other expenses. These efforts were unsuccessful.

My Qualifications

6. Over the years I have handled hundreds of ERISA delinquent contribution collection actions. I have been a lecturer before the New York State Bar Association on employment-related issues. I have frequently addressed the Bar Association's continuing legal education programs throughout New York State on topics relating to ERISA. I have authored articles for the New York State Bar Association Journal and the Labor and Employment Law Section Newsletter of the State Bar Association. Another article was published in Business Laws, Inc. in its publication, The Corporate Analyst entitled "What Every Corporate Counsel Should Know About ERISA". Recently I wrote "So What's ERISA All About?: A Concise Guide for Labor and Employment Attorneys" published in April 2004 in the Labor & Employment Newsletter of the New York State Bar Association and republished in October 2005 by the New York State Bar Association Journal. In 2004 I testified as an expert witness on the issue of the applicability of ERISA to a deferred bonus plan. I am peer rated AV by Martindale Hubbell. A reasonable community standards hourly rate for attorneys' time with respect to this matter based on my experience and rates for attorneys in the Southern District of New York is at least \$275.00 per hour.

Gellert & Klein, P.C.

7. Gellert & Klein, P.C. is a law firm which traces its history to 1933 when Joseph H. Gellert became a member of the Dutchess County Bar. In 1966, Judge Gellert's son, Arthur L. Gellert, joined his father in the practice of law as Gellert & Gellert. I joined the Gellerts in 1972. Sheldon Cutler and Leonard Klein formed a professional corporation known as Cutler & Klein, P.C. in 1969. The two firms merged in 1980 and are now known as Gellert & Klein, P.C. which now has twenty attorneys and of counsel with expertise in a broad range of practice areas. In 1991 an office was added in Westchester County. The firm is one of the largest and most diversified in the Hudson Valley.

Interest and Penalty Interest

8. Attached as Exhibit B is a calculation of the interest and penalty interest incurred by the plaintiffs in this matter. This calculation uses an average due date of June 1, 2007 and a paid date of December 20, 2007. The interest rate of 8% is in accordance with ERISA §502(g)(2) and Treasury Regulation §301.6621-3(e).

Time Records

9. Attached as Exhibit C is a computer printout of the contemporaneous time records through March 4, 2008 which I kept during the course of this litigation. It indicates that I have devoted a total of 15.7 hours to this case as of March 4, 2008 which at a rate of \$275/hour is \$4,317.50. I incurred no travel time so there is no need to deduct one-half of all travel time in accordance with the rules for this District on fee applications.

10. Exhibit D is an itemization of our attorney's disbursements necessarily

incurred during this litigation in our representation of the plaintiffs which total \$419.36.

Fee Arrangement

11. Plaintiffs retain the services of Gellert & Klein, P.C. on a monthly retainer basis for non-litigated matters. In addition, litigated and other extraordinary matters are handled at a reduced hourly rate of \$220.00 pursuant to our retainer agreement with plaintiffs. Nonetheless, it is respectfully submitted that an hourly rate of \$275.00 per hour is appropriate for an attorney with my qualifications practicing in the Southern District of New York. This is established by the cases cited in our Brief.

1.	Interest	\$1,421.51
2.	Penalty Interest	\$1,421.51
3.	Attorney's fees 15.7 hours x \$275.00 per hour	\$4,317.50
4.	Costs per statute, 28 U.S.C. § 1923	\$ 20.00
5.	Attorney's Disbursements	<u>\$ 419.36</u>
	Total Interest, Penalty Interest Fees Costs and Disbursements	\$7,599.88

Dated: March 10, 2008
Poughkeepsie, NY

/s/

Stephen E. Ehlers (SE-3094)
GELLERT & KLEIN, P.C.
75 Washington Street
Poughkeepsie, NY 12601
(845) 454-3250

THIS ITEM IS PART OF A PHOTOCOPY REQUEST
GROUP ID G28Feb08-310
Sequence number 105970881247 Posting date 21-DEC-07

Intercounty Paving Associates, LLC
An Equal Opportunity Employer
859 Willow Grove Street
Hackensack, NJ 07640
908-852-5868

Covered Bank
342 Route 46 West
Hackensack, NJ 07640

DATE November 30, 2007 CHECK NO. 12642

PAY *****
Thirty-one thousand nine hundred forty-nine dollars and 48 cents

PAY TO THE ORDER OF LABORERS LOCAL 1000 BENEFIT FU
514 HAIGHT AVENUE
POUGHKEEPSIE, NY 12603

AMOUNT \$*****31,949.48

PETTY ACCOUNT

SECURITY FEATURES INCLUDE MICR PRINTING, *YDZ CANCEL MARK, *BROWN & WHITE BACKER, *DRONAGUARD CHEMICAL INK COAT

000012642 0311010170 95 000245 L*

DEPOSIT ONLY
For Deposit Only
No Cash Withdrawals
Post Office Box 1000
P.O. Box 1000
New York, NY 10000

Amount: 000000000218486
Date: 07/30/07
Check No: 12642
Pay To: Laborers Local 1000-BF
City: Poughkeepsie
State: NY
Zip: 12603

ID #:

08300

514 Haight Avenue, Poughkeepsie, NY 12603 • Phone: (845) 454-1030 • Fax: (845) 471-2569

Employer Name:

INTERCOUNTY PAVING ASSOCIATES

859 WILLOW GROVE ST.

HACKETTSTOWN, NJ 07840

Employer Federal Id. No.

Telephone:

Address

Payroll week from

om 7-30-07 to 9-2-07

**This form must be filled
Out and submitted weekly
With Payments.**

Regular Straight Time Hours

@ 19.80

Total Hours

Amount

Overtime Hours

@ 21.19

Double Time Hours

@ 22.60

Apprentice Straight Time Hours

@ 10.25

Overtime Hours

@ 10.54

Double Time Hours

@ 10.85

Total amount due

Postage

Total incl. Postage

I certify that the information reflected above is in accordance with the books of account and represent the correct hours for the payroll weeks shown.

Contractor, by submitting this report to the Laborers Local 1000 Fringe Benefit Funds and signing the report, agrees to be bound by the current collective bargaining agreement between the Laborers Local 1000 and its contractor associations in all respects including the obligation to contribute to the Fringe Benefit Funds and further agrees to also be bound by the provisions of the Trust Agreements establishing the Fringe Benefit Funds.

Signature

Title

Date _____

Check #

12642

Amount

31. 949,46

Rec'd.

$$12 \overline{) 4107}$$

Date Range: 08-05-07 to: 09-02-07

Job Selected: ALL

Union: LABORERS

Local: 1000 DUTCHESS COUNTY, NY

Employee	Social Security #	Local Union No.	Regular Hours	Overtime Hours	Total Hours	Total Pay
Class: 2 GROUP						
MONROE, JOE G.	132-42-7640	Local 1000	116.00	5.50	121.50	3,237.96
KOSAKOWSKI, FRANK J.	088-60-0414	Local 1000	116.00	5.50	121.50	3,237.96
Class Totals			232.00*	11.00*	243.00*	6,475.92*
Class: 4 GROUP 4						
WILLIAMS, ROOSEVELT	103-50-4898	Local 1000	116.00	5.50	121.50	3,834.36
Local Totals			348.00*	16.50*	364.50*	10,310.28*
Union Totals			348.00*	16.50*	364.50*	10,310.28*

PAVING ASSOCIATES LLC
Date Range: 07-08-07 to: 07-29-07

Job Selected: ALL

Union: LABORERS

Local: 1000 DUTCHESS COUNTY, NY

Union Summary Report

08-15-2007

Employee	Social Security #	Local Union No.	Regular Hours	Overtime Hours	Total Hours	Total Pay
Class: 2 GROUP						
MONROE, JOE G.	132-42-7640	Local 1000	108.00	4.00	112.00	2,970.84
KOSAKOWSKI, FRANK J.	088-60-0414	Local 1000	105.00	4.00	109.00	2,892.66
Class Totals			213.00*	8.00*	221.00*	5,863.50*
Class: 4 GROUP 4						
WILLIAMS, ROOSEVELT	103-50-4898	Local 1000	110.50	4.00	114.50	3,595.19
Local Totals			323.50*	12.00*	335.50*	9,458.69*
Union Totals			323.50*	12.00*	335.50*	9,458.69*

514 Haight Avenue, Poughkeepsie, NY 12603 • Phone: (845) 454-1030 • Fax: (845) 471-2569

12/4/07

06-07 to: 06-03-07

Selected: ALL

Union: LABORER

Local: 1000 DUTCHESS COUNTY, NY

Employee	Social Security #	Local Union No.	Regular Hours	Overtime Hours	Total Hours	Total Pay
Class: 1 GROUP 1						
MONROE, JOE G.	132-42-7640	Local 1000	96.00	19.00	16.00	446.00
PUSTAI, DONA L.	096-42-1711	Local 1000	16.00	5.00	21.00	524.05
SHERIDAN, SHANNA L.	093-66-7046	Local 1000	16.00	5.00	21.00	524.05
BROWN, LINDA E.	103-38-0628	Local 1000	92.00	16.00	108.00	2,586.80
SCULLY, JANINA Z.	306-74-1360	Local 1000	70.00	10.50	80.50	1,912.23
Class Totals			202.00*	44.50*	246.50*	5,993.13*
Class: 2 GROUP						
LOBB, GARY	163-62-2652	Local 472	32.00	14.00	14.00	443.02
ZERUTH, CHARLES L.	156-62-9055	Local 472	32.00	5.00	37.00	1,029.37
MONROE, JOE G.	132-42-7640	Local 1000	88.00	11.00	99.00	2,723.28
JENKINS, SHAWN D.	155-68-3194	Local 472	16.00	1.50	17.50	475.60
JENKINS, SHANE D.	148-68-3515	Local 472	24.00	1.50	25.50	684.08
MONTANINO, PETER A.	081-58-5377	Local 1000	32.00	5.00	37.00	1,029.37
ELMORE JR., ARTHUR	098-36-3178	Local 1000	120.00	20.50	140.50	3,928.55
Class Totals			320.00*	50.50*	370.50*	10,313.27*
Class: 3 GROUP 3						
LOBB, GARY	163-62-2652	Local 472	24.00	8.00	32.00	974.16
BABUS JR., STEPHEN R.	144-52-5369	Local 472	32.00	5.00	37.00	1,068.87
JENKINS, SHAWN D.	155-68-3194	Local 472	8.00		8.00	216.48
SANDOVAL, JULIO CESAR	139-94-8881	Local 172	32.00	6.00	38.00	1,109.46
Class Totals			96.00*	19.00*	115.00*	3,368.97*
Class: 4 GROUP 4						
GRAHAM, LYLE	071-52-4918	Local 1000	152.00	27.00	179.00	5,940.56
Local Totals			770.00*	141.00*	911.00*	25,615.93*
Union Totals			770.00*	141.00*	911.00*	25,615.93*

Signature _____ Title _____ Date _____
Check # _____ Amount _____ Rec'd. _____

07 to: 04-29-07

ALL

LABORER

Local: 1000 DUTCHESS COUNTY, NY

Employee	Social Security #	Local Union No.	Regular Hours	Overtime Hours	Total Hours	Total Pay
Class: 2 GROUP						
SMITH , AUGUSTUS E.	052-88-0007	Local 1000	26.00		26.00	661.96
GRANT , DAMIAN	117-82-4721	Local 1000	18.00		18.00	458.28
Class Totals			44.00*	.00*	44.00*	1,120.24*
Local Totals			44.00*	.00*	44.00*	1,120.24*
Union Totals			44.00*	.00*	44.00*	1,120.24*

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Simple Interest Calculator

Use the boxes below to enter the details of the calculation and click Calculate to see result the month, use its number rather than its name.

	Day	Month	Year		Interest Rate
From (inclusive)	<input type="text" value="1"/>	<input type="text" value="6"/>	<input type="text" value="2007"/>		<input type="text" value="8"/> % per <input type="text" value="Year"/>
To (inclusive)	<input type="text" value="20"/>	<input type="text" value="12"/>	<input type="text" value="2007"/>		<input type="button" value="Calculate"/> <input type="button" value="Reset"/>
Initial amount ()	<input type="text" value="31949"/>				

Result

From (inclusive)	<input type="text" value="Friday 1st June 2007"/>				
To (inclusive)	<input type="text" value="Thursday 20th December 2007"/>				
	<input type="text" value="203"/> Day(s)	or	<input type="text" value="29"/> Week(s)	and	<input type="text" value="0"/> day(s)
Total interest (%)	<input type="text" value="4.45"/>				(rounded to 2)
Amount due to interest ()	<input type="text" value="1421.51"/>				(calculated on interest)
Final amount ()	<input type="text" value="33370.51"/>				

Hints & Tips

- The calculator requires a JavaScript capable Web Browser such as Netscape Navigator, or Internet Explorer 3.02 and later.
- Enter days, months and years as numbers.
- Only dates from the year 1900 to 2100 will be accepted.
- Leap years are counted as 366 days, non-leap years are 365 days.
- The average daily rate shown is based on a 365 day year.

Corrections and suggestions?

If you spot a problem or have a suggestion for how this calculator can be improved, please editor@hardwicke.co.uk.

Please be aware...

The Hardwicke Building online calculators are provided for you to use free of charge, and

Detail Fee Transaction File List

Gellert & Klein, PC

Date: 03/05/08

Client ID: 22517.6831 Trustees of the Laborers Local 1000

RE: Intercounty Paving Associates, LLC

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Description
22517.6831	10/16/2007	5 A		19	275.00	1.00	\$ 275.00	Summons and Complaint
22517.6831	10/16/2007	5 A		105	275.00	0.10	27.50	Telephone call with R.J. Merritt
22517.6831	10/23/2007	5 A		105	275.00	0.20	55.00	Telephone call with Benante
22517.6831	10/24/2007	5 A		6	275.00	0.30	82.50	Letter to Dodd
22517.6831	10/24/2007	5 A		6	275.00	0.20	55.00	Letter to Hesse
22517.6831	10/25/2007	5 A		105	275.00	0.10	27.50	Telephone call with Phil
22517.6831	10/26/2007	5 A		105	275.00	0.20	55.00	Telephone call with Phil
22517.6831	10/26/2007	5 A		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	11/8/2007	5 A		147	275.00	0.20	55.00	Revise complaint
22517.6831	11/9/2007	5 A		6	275.00	0.30	82.50	Letter to Ringwood
22517.6831	11/9/2007	5 A		19	275.00	0.60	165.00	Cover sheet, letter to clerk and letter to secretaries
22517.6831	11/14/2007	5 A		155	275.00	0.10	27.50	Email Dowd
22517.6831	11/14/2007	5 A		6	275.00	0.30	82.50	Letter to Dowd
22517.6831	11/27/2007	5 A		19	275.00	0.30	82.50	Initial Disclosure
22517.6831	11/27/2007	5 A		19	275.00	0.40	110.00	Notice to Produce
22517.6831	11/27/2007	5 A		19	275.00	0.40	110.00	Interrogatories
22517.6831	11/27/2007	5 A		19	275.00	0.30	82.50	Audit Order
22517.6831	11/27/2007	5 A		19	275.00	0.30	82.50	Deposition Notice
22517.6831	11/28/2007	5 A		6	275.00	0.30	82.50	Letter to Dowd
22517.6831	11/29/2007	5 A		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	12/3/2007	5 A		151	275.00	0.10	27.50	Telephone Attorney Dowd
22517.6831	12/4/2007	5 A		6	275.00	0.30	82.50	Letter to Dowd
22517.6831	12/4/2007	5 A		105	275.00	0.20	55.00	Telephone call with Hesse
22517.6831	12/6/2007	5 A		155	275.00	0.10	27.50	Email Dowd
22517.6831	12/11/2007	5 A		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	12/14/2007	5 A		159	275.00	0.10	27.50	Review Acknowledgment
22517.6831	12/17/2007	5 A		6	275.00	0.20	55.00	Letter to clerk
22517.6831	12/17/2007	5 A		159	275.00	0.10	27.50	Review stipulation
22517.6831	12/18/2007	5 A		159	275.00	0.10	27.50	Review Aiello letter
22517.6831	12/18/2007	5 A		6	275.00	0.20	55.00	Letter to client
22517.6831	12/18/2007	5 A		105	275.00	0.20	55.00	Telephone call with Hesse
22517.6831	12/19/2007	5 A		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	12/21/2007	5 A		2	275.00	0.20	55.00	Telephone conference with client
22517.6831	1/4/2008	5 A		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	1/8/2008	5 A		6	275.00	0.30	82.50	Letter to Benante
22517.6831	1/11/2008	5 A		2	275.00	0.10	27.50	Telephone conference with client and e-mail
22517.6831	1/16/2008	5 A		105	275.00	0.20	55.00	Telephone call with Gina Secora
22517.6831	1/22/2008	5 A		159	275.00	0.10	27.50	Review Shanahan letter
22517.6831	1/23/2008	5 A		151	275.00	0.10	27.50	Telephone Attorney Dowd
22517.6831	1/30/2008	5 A		8	275.00	0.30	82.50	Research re: Jury trial
22517.6831	1/30/2008	5 A		6	275.00	0.30	82.50	Letter to Benante
22517.6831	1/30/2008	5 A		159	275.00	0.20	55.00	Review Answer
22517.6831	2/4/2008	5 P		159	275.00	0.30	82.50	Review Brown case re: jury trial
22517.6831	2/5/2008	5 P		151	275.00	0.10	27.50	Telephone Attorney Dowd
22517.6831	2/6/2008	5 P		151	275.00	0.10	27.50	Telephone Attorney Dowd
22517.6831	2/6/2008	5 P		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	2/6/2008	5 P		6	275.00	0.20	55.00	Letter to client
22517.6831	2/20/2008	5 P		151	275.00	0.10	27.50	Telephone Attorney Dowd
22517.6831	2/20/2008	5 P		151	275.00	0.20	55.00	Telephone Attorney Dowd
22517.6831	2/20/2008	5 P		155	275.00	0.10	27.50	Email Dowd
22517.6831	2/21/2008	5 P		6	275.00	0.30	82.50	Letter to Judge Conner
22517.6831	2/25/2008	5 P		6	275.00	0.30	82.50	Letter to Hesse
22517.6831	2/26/2008	5 P		19	275.00	0.20	55.00	Notice of Motion
22517.6831	2/26/2008	5 P		19	275.00	0.50	137.50	Memo of Law
22517.6831	2/26/2008	5 P		19	275.00	0.60	165.00	SEE Certification

Detail Fee Transaction File List

Gellert & Klein, PC

Date: 03/05/08

Client ID: 22517.6831 Trustees of the Laborers Local 1000

RE: Intercounty Paving Associates, LLC

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Description
22517.6831	2/29/2008	5	P	105	275.00	0.10	27.50	Telephone call with Sharon Hesse
22517.6831	2/29/2008	5	P	19	275.00	0.60	165.00	Work on certification and brief
22517.6831	2/29/2008	5	P	19	275.00	0.40	110.00	Work on certificatio
22517.6831	3/4/2008	5	P	151	275.00	0.10	27.50	Telephone Attorney Dowd
22517.6831	3/4/2008	5	P	159	275.00	0.10	27.50	Review Order
22517.6831	3/4/2008	5	P	19	275.00	0.20	55.00	Notice of Motion
22517.6831	3/4/2008	5	P	19	275.00	0.40	110.00	Work on certification
22517.6831	3/4/2008	5	P	19	275.00	0.60	165.00	Work on brief
	Total					15.70	\$4,317.50	

Client	Trans Date	Tmkr	H P	Tcd	Rate	Amount	Ref #
Client ID 22517.6831 Trustees of the Laborers Local 1000							
22517.6831	10/15/2007	5	A	19		25.00 File retrieval	ARCH
22517.6831	10/24/2007	5	A	15	0.200	1.00 Photocopies	ARCH
22517.6831	11/09/2007	5	A	19		350.00 U.S. District Court Clerk - Filing of Summons & Complaint	ARCH
22517.6831	11/09/2007	5	A	15	0.200	12.00 Photocopies	ARCH
22517.6831	11/09/2007	5	A	18		13.16 Postage	ARCH
22517.6831	11/14/2007	5	A	15	0.200	2.20 Photocopies	ARCH
22517.6831	11/28/2007	5	A	15	0.200	5.60 Photocopies	ARCH
22517.6831	12/04/2007	5	A	128		2.00 Facsimile Telephone Transfers	ARCH
22517.6831	12/04/2007	5	A	15	0.200	0.20 Photocopies	ARCH
22517.6831	12/14/2007	5	A	15	0.200	1.20 Photocopies	ARCH
22517.6831	12/18/2007	5	A	15	0.200	1.40 Photocopies	ARCH
22517.6831	12/19/2007	5	A	15	0.200	0.80 Photocopies	ARCH
22517.6831	01/16/2008	5	A	128		2.00 Facsimile Telephone Transfers	ARCH
22517.6831	01/22/2008	5	A	15	0.200	0.40 Photocopies	ARCH
22517.6831	01/30/2008	5	A	15	0.200	0.20 Photocopies	ARCH
22517.6831	02/07/2008	5	P	15	0.200	0.20 Photocopies	37
22517.6831	02/25/2008	5	P	15	0.200	1.60 Photocopies	38
22517.6831	02/26/2008	5	P	15	0.200	0.40 Photocopies	39

Total for Client ID 22517.6831

Billable

419.36 Trustees of the Laborers Local 1000

RE: Intercounty Paving Associates, LLC

GRAND TOTALS

Billable

419.36